

Agenda

Item #2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: November 22, 2010

Re: Request for Waiver of Late Filing Penalty by Campaign for Maine PAC

The Campaign for Maine political action committee (PAC) was required to file an independent expenditure report on Saturday, October 9, 2010. The PAC filed the report three days late on Tuesday, October 12, after the Columbus Day weekend. The preliminary penalty amount for the late filing is \$1,551.12. The PAC requests a waiver of the penalty through a letter dated November 1, 2010 from its counsel, James T. Kilbreth.

The Commission staff recommends granting a partial waiver and assessing a penalty of \$250 because of the lack of harm to the public from the late disclosure, no matching funds were delayed, and because of incomplete communications between the PAC and the Commission staff. Mr. Kilbreth is correct that the office was closed for the four-day weekend of October 8-12. Therefore, even if the PAC had filed the report on October 9, the staff would not have posted the report as a pdf to the Commission's website until Tuesday, October 12. The late filing did not affect matching funds paid to gubernatorial candidate Elizabeth Mitchell, because she had already received the maximum matching funds in September. I had a conversation with Mr. Kilbreth around October 7 in which I

responded to his questions about filing deadlines for PACs. Regrettably, I did not mention to him the independent expenditure reporting requirement. In spite of these mitigating factors, the staff supports the assessment of a penalty to underscore the importance of filing independent expenditure reports on time in light of their importance in the Maine Clean Election Act program.



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE

By Regular and Certified Mail, Return Receipt Requested

October 14, 2010

Jamie Kilbreth
Campaign For Maine
2 Union Street, Floor 5
Portland, Maine 04101

Re: Penalty for late filing of Independent Expenditure

Dear Mr. Kilbreth:


The Campaign For Maine PAC filed an Independent Expenditure due October 9, 2010 three days late on October 12, 2010. Under the Commission's statutes, the late filing of a report by a political action committee triggers an enforcement process. (21-A M.R.S.A. § 1020-A(4-A)) The Commission staff has calculated the amount of a preliminary penalty for the late filing, based on the amount of financial activity in the report, the number of calendar days the report was late, and the PAC's previous violations. The preliminary penalty for the late filing is \$1,551.12. (Please see attached penalty matrix for the calculation.)

The PAC may pay the penalty or request that the members of the Commission waive the penalty in whole or in part. Any request for a waiver must be made within 14 calendar days of your receipt of this notice (or attempted delivery by the U.S. Post Office). The request must be notarized and contain a full explanation of the reasons the committee filed late. Upon receiving your request, the Commission staff will schedule your request for an upcoming Commission meeting.

Under 21-A M.R.S.A. § 1062-A(2), the Commission may waive the penalty if it determines that the report was late due to 'mitigating circumstances,' which are defined as: (1) a valid emergency of the committee treasurer; (2) an error made by the Commission staff; or (3) other circumstances determined by the Commission that warrant mitigation of the penalty, based upon relevant evidence presented that the committee made a bona fide effort to file the report on time, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. Also, the Commission may waive the penalty if it is disproportionate to the level of experience of the person filing the report or the harm suffered by the public from the late disclosure.

The Commission requests that the committee pay the preliminary penalty within two weeks, if it does not intend to request a waiver. Please call me at 287-6221 if you have any questions.

Sincerely,


Cindy Sullivan, PAC Registrar
Enc.: PAC penalty matrix

**COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
PENALTY MATRIX FOR LATE POLITICAL ACTION COMMITTEE REPORT FILINGS**

**BASIS FOR PENALTIES
21-A M.R.S.A. Section 1062-A**

Committee Name:	Campaign For Maine	Report Title:	Independent Expenditure
		Due Date:	October 9, 2010
Previous Violation(s):	0 this quarter	Filed Date:	October 12, 2010

The penalty for late filing of a required report is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

For the first violation, 1%
For the second violation, 3%
For the third and each subsequent violation, 5%

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Penalty Example:		Your Penalty is calculated as follows:	
The treasurer files the PAC's report two (2) days late. The PAC has not had any previous late violations this biennium. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is			
\$2,500	Greater amount of the total contributions received or expenditures made during the filing period	Contributions / Expenditures:	\$51,704.25
		x	1%
			<u>\$517.04</u>
X .01	Percent prescribed for first violation		
\$25.00	One percent of total contributions	Number of days late:	3
X 2	Number of calendar days late		
		Total penalty accrued:	<u>\$1,551.12</u>
\$50.00	Total Penalty		

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

A required report that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1062-A(3)

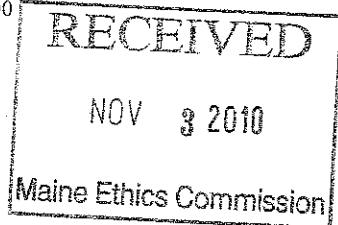
\$10,000 for 11-Day Pre Election reports, 42-Day Post-Election reports, 24-Hour reports
and for Quarterly reports

Verrill Dana^{LLP}

Attorneys at Law

JAMES T. KILBRETH
jkilbreth@verrilldana.com
Direct: 207-253-4600

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com



November 1, 2010

Cindy Sullivan, PAC Registrar
State of Maine
Commission on Governmental Ethics
And Election Practices
135 State House Station
Augusta, ME 04333-0135

Re: Campaign for Maine—Request for Waiver

Dear Cindy:

Please consider this Campaign for Maine's request, pursuant to 21-A M.R.S.A. § 1062-A, for a waiver of the late filing penalty calculated by the Commission staff in connection with the Independent Expenditure report filed by Campaign for Maine on October 12, 2010.

The grounds for this request are both practical and legal:

First, as a practical matter, and as contemplated by the statute, the penalty is disproportionate to any harm to the public. The Independent Expenditure Report was filed on Tuesday October 12 rather than on Saturday, October 9. Because October 9 was the Saturday of the Columbus Day weekend, and the Commission office was closed Friday through Monday of that weekend, there was no meaningful delay in the public's ability to access the information that resulted from a filing on Tuesday rather than on Saturday. Indeed, the press began reporting on several independent expenditure reports, including Campaign for Maine's, on Tuesday. And because of the Columbus Day weekend, we were unable to file our registration statement before Tuesday, a fact we confirmed with staff; it seems particularly anomalous to penalize Campaign for Maine for a late filing when the information in the filing was not going to be disseminated to the public over the long weekend in any event and the very same information required by the Independent Expenditure Report was included in the registration statement that could only be filed on Tuesday.

Second, as a legal matter, a penalty in these circumstances raises significant first amendment concerns, both with respect to penalizing an exercise of Campaign for Maine's first amendment rights, and with respect to the vagueness of Section 1058. For the reasons described above, it is hard to see what the compelling state interest is in penalizing Campaign for Maine for a late filing that in no way resulted in the harm the statute is trying to address, i.e., lack of timely

November 1, 2010

Page 2


disclosure. And section 1058 contemplates filings by political action committees in accordance with section 1059 once they are registered; it is hard to see how one can easily infer that independent expenditure reports are due before registration, given that a relatively modest expenditure of \$1500 requires registration:

“A political action committee that is required to register with the commission shall file a report on its activities.A political action committee ... required ...to file a report shall file the report for each filing period under section 1059”

Thus, it seems entirely reasonable, given the low amounts that trigger registration, to read this section as only requiring reports, such as independent expenditure reports, to be filed simultaneously with or after registration, as occurred here.

For all these reasons, Campaign for Maine respectfully requests that the penalty preliminarily assessed be waived.

Very truly yours,

A handwritten signature in black ink, appearing to read "James T. Kilbreth". The signature is stylized with a large, looping initial "J".

James T. Kilbreth

JTK/prf

cc: Tom Saturley
Jon Doyle



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

November 12, 2010

Mr. James T. Kilbreth
Verill Dana LLP
One Portland Square
Portland, ME 04112-0586

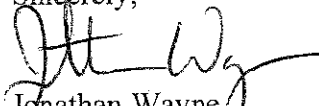
Dear Mr. Kilbreth:

Thank you for requesting a waiver of a late-filing penalty. Your request will be considered by the members of the Ethics Commission at their next meeting on Tuesday, November 30, 2010 at 11:00 a.m. The meeting will be held at our office at 45 Memorial Circle, 2nd floor, Augusta, Maine. You are welcome to attend the meeting in support of your request, but that is not required.

Next week, I will discuss your request with my colleagues and will write up a short memo for the Commissioners that will include a recommendation on behalf of the Commission staff. All of the materials relating to your request will be mailed to the Commissioners on November 22. That day, the agenda and materials will be posted on the Commission's website, www.maine.gov/ethics.

If you have any questions, please call me at 287-4179.

Sincerely,


Jonathan Wayne
Executive Director

cp



COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES
Mail: 135 State House Station, Augusta, Maine 04333
Office: 45 Memorial Circle, Augusta, Maine

Website: www.maine.gov/ethics
Phone: 207-287-4179
Fax: 207-287-6775

2010 CAMPAIGN FINANCE REPORT FOR POLITICAL ACTION COMMITTEES

COMMITTEE INFORMATION		
CAMPAIGN FOR MAINE 2 UNION STREET, FL 5 PORTLAND, ME 04101		TEL: (207)772-2717 FAX: EMAIL: jkilbreth@verrilldana.com
TREASURER		
JON R. DOYLE 150 CAPITOL STR C/O DOYLE & NELSON AUGUSTA, ME 04330		TEL: (207)622-6124 EMAIL: jdoyle@doylenelson.com
TYPE OF REPORT	DUE DATE	REPORTING PERIOD
INITIAL REPORT		1/1/2010 - 12/31/2010
NO FINANCIAL ACTIVITY IN THIS REPORTING PERIOD FOR SCHEDULES A1, C, D		
CERTIFICATION		
<p>I, JON R DOYLE, CERTIFY THAT THE INFORMATION CONTAINED IN THIS REPORT IS TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.</p> <p>REPORT FILED BY: JON R DOYLE ON BEHALF OF JON DOYLE, TREASURER REPORT FILED ON: October 12, 2010</p> <p>IF THIS REPORT IS FILED BY AN AUTHORIZED AGENT OF THE COMMITTEE, THE TREASURER AND AGENT ARE LIABLE FOR ANY VIOLATIONS OF MAINE CAMPAIGN FINANCE LAW (21-A M.R.S.A. CHAPTER 13) AND THE COMMISSION'S RULES THAT MAY RESULT FROM THE FILING OF A FALSE OR INACCURATE REPORT.</p>		

UNSWORN FALSIFICATION IS A CLASS D CRIME (17-A M.R.S.A. § 453).

CAMPAIGN FOR MAINE

SCHEDULE A ONLY

SCHEDULE A CASH CONTRIBUTIONS

- For contributors who gave more than \$50, the names, address, occupation, and employer must be reported. If "information requested" is listed instead of occupation and employer, the candidate is waiting to receive that information.
- Cash contributions of \$50 or less can be added together and reported as a lump sum.
- Contributor Types

1 = Individuals	4 = Party Committees
2 = Commercial Sources	5 = Candidate Committees
3 = Political Action Committees	6 = Unitemized Contributions

DATE RECEIVED	CONTRIBUTOR	OCCUPATION AND EMPLOYER	TYPE	AMOUNT
10/04/2010	CHRISTOPHER M HARTE 327 CONGRESS AVE, #200 AUSTIN TX 78701	BUSINESSMAN SELF	1	\$25,000.00
10/04/2010	ANTHONY W BUXTON 138 STROUDWATER ROAD PORTLAND ME 04102	ATTORNEY PRETI FLAHERTY	1	\$2,000.00
10/04/2010	THOMAS W SATURLEY 4 CITY CENTER PORTLAND ME 04101	INFO REQUESTED INFO REQUESTED	1	\$5,000.00
10/08/2010	MICHAEL P ASEN PO BOX 427 PORTLAND ME 04112	INFO REQUESTED INFO REQUESTED	1	\$1,000.00
10/08/2010	HORACE A HILDRETH, JR 121 FREE STREET PORTLAND ME 04112	INFO REQUESTED INFO REQUESTED	1	\$5,000.00
10/11/2010	ROBERT A MOORE 5 SPRUCE LANE CUMBERLAND FORESIDE ME 04110	INFO REQUESTED INFO REQUESTED	1	\$1,000.00
10/11/2010	JOHN W RYAN 381 SPRING STREET PORTLAND ME 04102	INFO REQUESTED INFO REQUESTED	1	\$5,000.00
10/11/2010	STILLWATER REALTY LLC PO BOX 2400 BANGOR ME 04402		2	\$5,000.00
10/10/2010			6	\$60.37
10/09/2010			6	\$28.08
TOTAL CASH CONTRIBUTIONS ⇨				\$49,088.45

CAMPAIGN FOR MAINE

SCHEDULE B ONLY

**SCHEDULE B
EXPENDITURES TO SUPPORT OR OPPOSE**

EXPENDITURE TYPES				
CNS	Campaign consultants	POL	Polling and survey research	
CON	Contribution to other candidate, party, committee	POS	Postage for U.S. Mail and mail box fees	
EQP	Equipment (office machines, furniture, cell phones, etc.)	PRO	Other professional services	
FND	Fundraising events	PRT	Print media ads only (newspapers, magazines, etc.)	
FOD	Food for campaign events, volunteers	RAD	Radio ads, production costs	
LIT	Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL	Campaign workers' salaries and personnel costs	
MHS	Mail house (all services purchased)	TRV	Travel (fuel, mileage, lodging, etc.)	
OFF	Office rent, utilities, phone and internet services, supplies	TVN	TV or cable ads, production costs	
OTH	Other	WEB	Website design, registration, hosting, maintenance, etc.	
PHO	Phone banks, automated telephone calls	Only these expenditure types require a remark: CNS, OTH, PRO.		

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/07/2010	CHOICE VOICE 7 GROVE STREET BATH, ME 04530		TVN	\$400.00
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/07/2010	CITADEL BROADCASTING ONE CITY CENTER PORTLAND, ME 04101		TVN	\$100.00
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/07/2010	MAINE VIDEO SYSTEMS 495 FOREST AVE PORTLAND, ME 04101		TVN	\$315.00
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/07/2010	TIME WARNER CABLE 477 CONGRESS STREET PORTLAND, ME 04101		TVN	\$2,533.00
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			

10/07/2010	WPFO 233 OXFORD STREET PORTLAND, ME 04110		TVN	\$2,137.75
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/07/2010	WMTW 477 CONGRESS ST PORTLAND, ME 04101		TVN	\$4,003.50
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/07/2010	WABI 35 HILDRETH ST BANGOR, ME 04401		TVN	\$8,738.00
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/07/2010	WWII & WFX 371 TARGET INDUSTRIAL CIRCLE BANGOR, ME 04401		TVN	\$4,020.50
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/07/2010	WAGM 12 BREWER ROAD PRESQUE ISLE, ME 04769		TVN	\$2,911.25
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/08/2010	MAINE VIDEO SYSTEMS 495 FOREST AVE PORTLAND, ME 04101		TVN	\$183.75
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/08/2010	THE MEDIA MONGUL 360 TUTTLE ROAD CUMBERLAND CTR, ME 04021		TVN	\$700.00
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/07/2010	GME 81 NORTHPORT AVE PORTLAND, ME 04103		TVN	\$7,437.50
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			

10/07/2010	WLBZ ONE CONGRESS STREET PORTLAND, ME 04101		TVN	\$3,527.50
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
10/07/2010	WCSH ONE CONGRESS STREET PORTLAND, ME 04101		TVN	\$14,696.50
	PAYMENT TO SUPPORT: ELIOT R. CUTLER, GOVERNOR, DISTRICT: -NONE-			
TOTAL EXPENDITURES ➡				\$51,704.25

CAMPAIGN FOR MAINE

SCHEDULE B- 1 ONLY

**SCHEDULE B - 1
OPERATING EXPENDITURES**

EXPENDITURE TYPES	
CNS Campaign consultants	POL Polling and survey research
CON Contribution to other candidate, party, committee	POS Postage for U.S. Mail and mail box fees
EQP Equipment (office machines, furniture, cell phones, etc.)	PRO Other professional services
FND Fundraising events	PRT Print media ads only (newspapers, magazines, etc.)
FOD Food for campaign events, volunteers	RAD Radio ads, production costs
LIT Print and graphics (flyers, signs, palmcards, t-shirts, etc.)	SAL Campaign workers' salaries and personnel costs
MHS Mail house (all services purchased)	TRV Travel (fuel, mileage, lodging, etc.)
OFF Office rent, utilities, phone and internet services, supplies	TVN TV or cable ads, production costs
OTH Other	WEB Website design, registration, hosting, maintenance, etc.
PHO Phone banks, automated telephone calls	
<i>Only these expenditure types require a remark: CNS, OTH, PRO.</i>	

DATE OF EXPENDITURE	PAYEE	REMARK	TYPE	AMOUNT
10/09/2010	GENERAL COURIER 385 MAIN STREET SOUTH PORTLAND, ME 04106	Delivery Charges	OTH	\$28.08
10/10/2010	FEDERAL EXPRESS MEMPHIS, TN 00000	Delivery Charges	OTH	\$60.37
10/06/2010	TD BANK PORTLAND, ME 04101	Bank Charges incoming wire fee	OTH	\$10.00
TOTAL EXPENDITURES ⇨				\$98.45

**SCHEDULE F
SUMMARY SCHEDULE**

CASH ACTIVITY		
RECEIPTS	TOTAL FOR THIS PERIOD	TOTAL FOR YEAR
1. CASH CONTRIBUTIONS (Schedule A)	\$49,088.45	\$49,088.45
2. OTHER CASH RECEIPTS (interest, etc.)	\$0.00	\$0.00
3. LOANS (Schedule C, new loans and additional amounts loaned)	\$30,000.00	\$30,000.00
4. TOTAL RECEIPTS (lines 1+2+3)	\$79,088.45	\$79,088.45
EXPENDITURES		
5. EXPENDITURES TO SUPPORT OR OPPOSE (Schedule B)	\$51,704.25	\$51,704.25
6. OPERATING EXPENDITURES (Schedule B-1)	\$98.45	\$98.45
7. LOAN REPAYMENTS (Schedule C)	\$0.00	\$0.00
8. TOTAL PAYMENTS (lines 5+6+7)	\$51,802.70	\$51,802.70
CASH SUMMARY		
9. CASH BALANCE AT BEGINNING OF PERIOD (from last report)	\$0.00	
10. PLUS TOTAL RECEIPTS THIS PERIOD (line 4 above)	\$79,088.45	
11. MINUS TOTAL PAYMENTS THIS PERIOD (line 8 above)	\$51,802.70	
12. CASH BALANCE AT END OF PERIOD	\$27,285.75	
OTHER ACTIVITY		
	TOTAL FOR THIS PERIOD	TOTAL FOR YEAR
13. IN-KIND CONTRIBUTIONS (Schedule A-1)	\$0.00	\$0.00
14. TOTAL LOAN BALANCE AT END OF PERIOD (Schedule C)	\$0.00	
15. TOTAL UNPAID DEBTS AT END OF PERIOD (Schedule D)	\$0.00	